

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL)
2 DEVELOPMENT PERMIT ISSUED BY)
3 KING COUNTY TO LAKE HAVEN)
4 SEWER DISTRICT,)
5 SISTERS OF THE VISITATION,)
6 MR. & MRS. PETRICH, AND)
7 MR. & MRS. IMHOF,)
8 Appellants,)
9 v.)
10 KING COUNTY,)
11 Respondent.)

SHB Nos. 80-44 & 80-46
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 THIS MATTER, the request for review of a shoreline substantial
11 development permit issued by King County, having come on regularly for
12 formal hearing on July 1 and 2, 1982, in Lacey, and appellant Sisters
13 of the Visitation having been represented by its attorney Malcolm C.
14 Lindquist; appellant J. M. Petrich having appeared and represented
15 himself; appellants Mr. and Mrs. Imhof having been represented by their
16 attorney, William J. Murphy; and respondent having been represented by
17 its Deputy Prosecuting Attorney, Steven O. Kenyon, with William A.
18 Harrison presiding, and having reviewed the Proposed Order of the

1 presiding officer mailed to the parties on the 23rd of November, 1982,
2 and more than twenty days having elapsed from said service; and

3 The Board having received no exceptions to said Proposed Order
4 and the Board being fully advised in the premises; NOW THEREFORE,

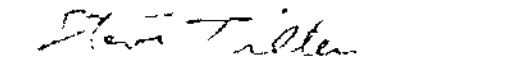
5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
6 Order containing Findings of Fact, Conclusions of Law and Order dated
7 the 23rd day of November, 1982, and incorporated by reference herein
8 and attached hereto as Exhibit A, are adopted and hereby entered as
9 the Board's Final Findings of Fact, Conclusions of Law and Order here-
10 in.

11 DATED this 10th day of February, 1983.

12 SHORELINES HEARINGS BOARD

13 
14 GAYLE ROTHROCK, Chairman

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16 DENNIS DERICKSON, Member

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18 STEVEN TILLEY, Member

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20 A. M. O'MEARA, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB Nos. 80-44 & 80-46

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED BY KING COUNTY TO LAKE
HAVEN SEWER DISTRICT,

SISTERS OF THE VISITATION,
MR. and MRS. PETRICH, and
MR. and MRS. IMHOF,

Appellants,

v.

KING COUNTY,

Respondent.

SHB Nos. 80-44 and 80-46

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a shoreline substantial development permit issued by King County, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, Dennis Derickson, A. M. O'Meara, and Steven Tilley, Members, convened at Lacey, Washington, on July 1 and 2, 1982. William A. Harrison, Administrative Law Judge, presided.

Appellant Sisters of the Visitation appeared by its attorney

EXHIBIT A

1 Malcolm C. Lindquist. Appellant J. M. Petrich appeared and
2 represented himself. Appellants Mr. and Mrs. Imhof appeared by their
3 attorney, William J. Murphy. Appellants Mr. and Mrs. Imhof were
4 joined on the record at hearing in substitution for Mr. and Mrs. Ellis
5 who withdrew. Mr. and Mrs. Imhof are the successors in interest to
6 the real property formerly owned by Mr. and Mrs. Ellis. Respondent
7 King County was represented by Steven O. Kenyon, Deputy Prosecuting
8 Attorney. The State Department of Ecology appeared as amicus curiae
9 in this matter and filed a brief by Patricia A. Hickey, Assistant
10 Attorney General. Reporter Lois Fairfield recorded the proceedings.

11 Witnesses were sworn and testified. Exhibits were examined.
12 Post-hearing briefs were considered, the last of these being filed
13 August 2, 1982. From testimony heard and exhibits examined, the
14 Shorelines Hearings Board makes these

15 FINDINGS OF FACT

16 I

17 This matter arises upon the shoreline of Dumas Bay on Puget Sound
18 in King County.

19 II

20 For twenty-five years the Catholic Sisters of the Visitation have
21 maintained their convent on the shoreline of Dumas Bay. Known as
22 Visitation Retreat, the convent exists to provide quiet refuge to
23 women of any faith who seek consolation through peace and solitude.
24 The Retreat encompasses some forty acres, including tidelands, and can
25 accommodate forty women with overnight lodging. The Retreat is also

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB Nos. 80-44, 80-46

1 home to twenty Sisters who aid those seeking refuge. The Sisters'
2 life is one of quiet prayer and meditation.

3 III

4 Upland from the Visitation Retreat is the sewage treatment
5 facility of Lakehaven Sewer District. Lacking access to the salt
6 water for their pipeline and submarine outfall, the Sewer District
7 sought to buy a narrow parcel running along the north side of the
8 Visitation Retreat. The Sisters sold the land to the Sewer District
9 foreseeing no threat to the quiet and solitude necessary to the
10 operation of the Retreat.

11 IV

12 The access parcel which the Sewer District purchased from the
13 Sisters runs from Marine View Drive to the salt water. The end at
14 Marine View Drive is now protected by a locked gate. Although
15 children play there, the site is not now, nor for twenty-five years
16 has it been, used for public access to the shoreline.

17 V

18 In July, 1980, Lakehaven Sewer District applied to King County for
19 a shoreline substantial development permit to add a new sanitary sewer
20 outfall to its existing submarine outfall in Dumas Bay on the site in
21 question. King County published and mailed notice of the
22 application. The Sewer District performed an environmental assessment
23 and made a declaration on non-significance under the State
24 Environmental Policy Act chapter 43.21C RCW. King County approved a
25 substantial development permit for the proposed sanitary sewer on

PROPOSED FINDINGS OF FACT,
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27 SHB Nos. 80-44, 80-46

condition that the Sewer District construct public access improvement along its right-of way. Specifically, the permit contains these four pertinent conditions:

8. The applicant shall construct public access improvements along the right of way of the sewer outfall and adjacent Sewer District land, to provide public access to the beach, shoreline, and Lakota Creek.
9. As a minimum, such improvements shall include:
 - (a) Fencing and/or landscape plantings where appropriate to mark adjacent property lines.
 - (b) A minimum four-foot wide path or trail from either Dash Point Road or SW 304th Street to the shoreline. The surface of the path or trail shall be either crushed rock or gravel or other approved surface. A foot bridge over Lakota Creek may be needed if the SW 304th Street alternative is chosen.
 - (c) An overlook area with at least two benches, adjacent to the beach and with access to the beach.
 - (d) Locked bollards or other means to prohibit unauthorized vehicular traffic on the path.
 - (e) Permanent sign or plaque to identify the beginning of the trail and mark the location as a public access point.
10. The applicant shall submit a site plan for the public access improvements to the King County Building and Land Development Division for approval.
11. Maintenance of the public access improvements shall be the responsibility of the Lakehaven Sewer District unless another public agency agrees to assume maintenance responsibilities.

VI

The public access developments required by King County would

1 create significant intrusion into the solitude needed for operation of
2 the adjacent Visitation Retreat. This would come both from increased
3 noise and concentrations of people. The access presents a liklihood
4 that the public would walk the beach from the narrow access point,
5 thereby entering the privately owned tidelands of the Sisters. These
6 tidelands cannot be both a public destination and a retreat.

7 VII

8 No parking place for automobiles is physically available at the
9 trailhead. No parking provision has been made although persons would
10 have to leave their cars to walk the trail required in the permit.

11 VIII

12 King County bases its trail requirement upon King County Shoreline
Master Program (KCSMP) Section 503(8)(b) p. 29 which states:

14 Development proposed in shorelines of the state shall
15 maintain setbacks, provide easements or otherwise
develop the site to permit a trail to be constructed
16 for public access to continue where:

17 a) . . .

18 b) part of the site is presently being used and
has historically been used for public access.
19 (Emphasis added.)

20 King County also cites the Public Access Element of its master
program at KCSMP Policy No. 7 (p. 7) numbers 1 and 4 which state:

21 1. Where appropriate, utility and transportation
22 rights of way on the shoreline should be made
available for public access and use.

23 4. Public pedestrian easements and access points
24 should be of a nature and scale that would be
25 compatible with abutting and adjacent land use as
well as natural features including aquatic life.
(Emphasis added.)

1 The same Public Access Element of the KCSMP also provides at p. 5.

2 1. Access development should respect and protect the
3 enjoyment of private rights in shoreline property.

4 Policy 1 - Shoreline access areas should be planned
5 to include ancillary facilities such as parking and
6 sanitation when appropriate.

7 Policy 2 - Shoreline access and ancillary facilities
8 should be designed and developed to provide for
9 adequate protection for adjacent private properties.

10 IX

11 There are five existing public accesses to the salt water in the
12 vicinity of the site: 1) Saltwater State Park, 2) Redondo, 3) Dumas
13 Bay King County Park, 4) Dash Point State Park, and 5) Dash Point
14 Pierce County Park. The farthest of these is eight miles by car from
15 the site, the nearest is one and one-half miles by car.

16 X

17 Any Conclusion of Law which should be deemed a Finding of Fact is
18 hereby adopted as such.

19 From these Findings the Board enters these

20 CONCLUSIONS OF LAW

21 I

22 We review the substantial development permit before us for
23 compliance with the provisions of the Shoreline Management Act,
24 chapter 90.55 RCW, and the King County Shoreline Master Program. RCW
25 90.58.140(2)(b).

26 II

27 The Shoreline Management Act provides in its policy at

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

SHB Nos. 80-44, 80-46

1 RCW 90.58.020.

2 In the implementation of this policy the public's
3 opportunity to enjoy the physical and aesthetic
4 qualities of natural shorelines of the state shall be
5 preserved to the greatest extent feasible consistent
6 with the overall best interest of the state and the
7 people generally. To this end uses shall be
8 preferred which are consistent with control of
9 pollution and prevention of damage to the natural
10 environment, or are unique to or dependent upon use
11 of the state's shoreline. Alterations of the natural
12 condition of the shorelines of the state, in those
limited instances when authorized, shall be given
priority for single family residences, ports,
shoreline recreational uses including but not limited
to parks, marinas, piers, and other improvements
facilitating public access to shorelines of the
state, industrial and commercial developments which
are particularly dependent on their location on or
use of the shorelines of the state and other
development that will provide an opportunity for
substantial numbers of the people to enjoy the
shorelines of the state.

13 The proposed sanitary sewer submarine outfall is dependent upon use of
14 the state's shorelines and is consistent with the policy of the Act
15 even without public access improvements.

16 III

17 The site is not presently being used nor has it historically been
18 used for public access to the shorelines so as require development of
19 a trail under KCSMP Section 503(8)(b).

20 IV

21 The use of the abutting Visitation Retreat as a refuge of quiet
22 renders public access over the site inappropriate, incompatible with
23 and unprotective of that use in violation of KCSMP Policy No. 7
24 (p 7), and Policy No. 1 (p. 5). The trail conditions of the permit
25 should be stricken.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The substantial development permit granted by King County to Lakehaven Sewer District is affirmed excepting conditions numbers 8, 9, 10, and 11 which are stricken.

DONE at Lacey, Washington, this 23rd day of November, 1982.

SHORELINES HEARINGS BOARD

William A. Harrison
WILLIAM A. HARRISON
Administrative Law Judge